

BLACKWOOD & NICHOLS CO. ET AL.

IBLA 96-390, 391, 402, and 431

Decided June 27, 1997

Appeals from a "Dear Payor/Operator" letter issued by the Minerals Management Service regarding computation of royalty on coalbed methane gas produced from Federal leases.

Dismissed as premature.

1. Administrative Procedure: Standing—Rules of Practice: Appeals: Standing to Appeal

Standing to appeal generally requires a decision adjudicating the rights of the parties in a given factual context. An appeal from a form letter announcing "guidelines" for Federal oil and gas lessees regarding allowance of expenses for removal of carbon dioxide from coalbed methane gas when calculating royalty is properly dismissed as premature in the absence of a decision adjudicating the existence of facts sufficient to support a finding of liability for royalty.

APPEARANCES: Marla J. Williams, Esq., Denver, Colorado, for Burlington Resources Oil & Gas Company; Patricia Dunmire Bragg, Esq., and Stephen R. Ward, Esq., Tulsa, Oklahoma, for Blackwood & Nichols; Robert G. Leo, Jr., Esq., Denver, Colorado, for Amoco; Karen F. Brand, Esq., and Kenneth E. Rogers, Esq., Bartlesville, Oklahoma, for Phillips Petroleum; Howard W. Chalker, Esq., Office of the Solicitor, U.S. Department of the Interior, for Minerals Management Service.

OPINION BY ADMINISTRATIVE JUDGE GRANT

This case involves consolidated appeals by Federal oil and gas lessees from an April 22, 1996, "Dear Payor/Operator" letter regarding computation of royalty on coalbed methane gas produced from Federal leases. ^{1/} The letter was signed by the Associate Director for Royalty Management,

^{1/} Appellants in this case are Blackwood & Nichols Company (IBLA 96-390), Phillips Petroleum Company (IBLA 96-391), Amoco Production Company (IBLA 96-402), and Burlington Resources Oil & Gas Company (formerly Meridian Oil Inc.) (IBLA 96-431).

Minerals Management Service (MMS). Purporting to respond to inquiries from producers in the San Juan Basin of New Mexico, the letter provided "guidelines" for valuation of coalbed methane gas. Among other things, the guidelines preclude deduction from the market value of the methane gas for the cost of removing associated carbon dioxide (CO₂) to place the gas in marketable condition. Also barred is the inclusion in a transportation allowance of the cost of removing CO₂.

Appellants are royalty payors on coalbed gas produced from Federal and Indian leases in the San Juan Basin. On appeal, they note that the coalbed gas often contains substantial amounts of CO₂ (e.g., 10 percent) which does not interfere with its use as a fuel, but which is routinely removed if the gas is transported by interstate pipeline in order to make transportation more economic. Appellants assert that they are adversely affected by the payor letter, contending that the lessor should bear its share of CO₂ removal costs.

Counsel for MMS has filed a motion to dismiss these appeals for lack of jurisdiction because the payor letter was not a final appealable decision. Noting that the Associate Director for Royalty Management has not been delegated the authority to finally decide royalty valuation matters and that the payor letter was not a final royalty valuation adjudication, MMS points out that the appellate jurisdiction of the Board extends to appeals from final decisions of the Director, MMS (or the Commissioner of Indian Affairs in the case of Indian leases). 30 C.F.R. § 290.7. Further, MMS contends that the payor letter guidelines did not adversely affect Appellants because they did not "require a payor to take certain action to rectify past discrepancies or to take certain action in the future in regard to a fact specific situation." (Motion to Dismiss at 4.) The MMS asserts that any adverse impact to Appellants is hypothetical at this point and, hence, the appeals are premature.

Appellants have filed a brief in opposition to the motion to dismiss. Appellants contend that the Associate Director for Royalty Management has the authority to make decisions for MMS regarding royalty liability and that the effect of the payor letter is a final decision prohibiting the deduction of costs associated with removal of CO₂ for purposes of calculating royalty. In opposing dismissal, Appellants note that the Board has on at least one occasion declined to dismiss an appeal from action taken by the Associate Director where the record disclosed that the Director was aware of and had acquiesced in the decision of the Associate Director. Appellants point out that the payor letter was issued to implement the decision of the MMS Royalty Policy Board, of which the Director is a member, as evidenced by the December 7, 1995, memorandum from the Deputy Director, MMS, to the Associate Director. (Attachment 2 to MMS Motion to Dismiss.) Further, Appellants argue that the payor letter has an immediate adverse impact in that it bars deduction of CO₂ removal costs as part of transportation expenses regardless of the factual context. Appellants assert that challenging the payor letter in the context of a specific factual context will require lessees to risk liability for

interest on unpaid amounts and, potentially, civil penalties. Because of the threshold issue of whether these cases are currently ripe for review by the Board, we have advanced this case on our docket for review.

[1] Appeals to this Board from MMS decisions are governed by the regulation at 30 C.F.R. § 290.7, which provides: "Any party to a case adversely affected by a final decision of the Director, Minerals Management Service * * * shall have a right of appeal to the Board of Land Appeals * * *." See 43 C.F.R. § 4.1(b)(3). While the letter in this case was not signed by the MMS Director, this is not necessarily dispositive. Appellants have pointed out that the Board has not always required that the decision actually be issued by the Director, MMS, when it is clear the Director has approved the decision. See Marathon Oil Co., 94 IBLA 78, 81 (1986). ^{2/} However, we find the present cases to be distinguishable in that, unlike Marathon, no final decision has been issued which adjudicates Appellants' rights in the matter at issue.

We have held that where an adverse impact on a party is contingent upon some future occurrence, or where the adverse impact is merely hypothetical, it is premature for this Board to decide the matter. Phillips Petroleum Co., 109 IBLA 4, 15 (1989); State of Alaska, 85 IBLA 170, 172 (1985); Lone Star Steel Co., 77 IBLA 96, 97 (1983). Generally, standing to appeal requires a decision adjudicating the rights of the parties in a given factual context. Thus, the Board dismissed without prejudice as premature an appeal from a BLM form letter returning a mining claim rental fee, finding that the form letter failed to constitute an adjudication of the existence of facts sufficient to support a ruling on the validity of the claim and, hence, no appealable decision had issued. Mesa Sand and Rock, Inc., 128 IBLA 243, 246 (1994); see Joe Trow, 119 IBLA 388, 391-92 (1991). Under this analysis, neither general policy papers nor statements of policy are appealable to this Board. James C. Mackey, 114 IBLA 308, 315 (1990); Headwaters, Inc., 101 IBLA 234, 239 (1988). These precedents are controlling in the context of this case involving appeals of "guidelines" for valuation of coalbed methane gas.

Accordingly, we find that the appeals in these cases must be dismissed as premature. Similarly, the motions for stay filed by Appellants as well as the request for oral argument are properly denied as premature. ^{3/}

^{2/} Vacated in part, Marathon Oil Co. (On Reconsideration), 103 IBLA 138 (1988).

^{3/} We would note that, insofar as Appellants' fear of incurring future liabilities for interest is concerned, they may submit any required payments under protest and proceed with a challenge to the policy without incurring any risk of further interest charges.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the consolidated appeals in this case are dismissed as premature.

C. Randall Grant, Jr.
Administrative Judge

I concur.

James L. Burski
Administrative Judge

